[Cite as *Grange Mut. Cas. Co. v. Norton*, 2010-Ohio-3660.]

STATE OF OHIO))ss: COUNTY OF MEDINA)	IN THE COURT OF APPEALS NINTH JUDICIAL DISTRICT
GRANGE MUTUAL CASUALTY COMPANY Appellant v. WILLIAM NORTON, et al. Appellees	C.A. No. 10CA0017-M APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF MEDINA, OHIO CASE No. 07CIV1130

DECISION AND JOURNAL ENTRY

Dated: August 9, 2010

WHITMORE, Judge.

{¶1} Plaintiff-Appellant, Grange Mutual Casualty Company ("Grange"), appeals from decision of the Medina County Court of Common Pleas, granting summary judgment in favor of Defendant-Appellees, William Norton ("Father"), Nicole Norton ("Stepmother"), Carol Norton ("Mother"), Schari Norton ("Daughter"), and Robert Norton ("Grandfather"). This Court dismisses for lack of jurisdiction.

I

{¶2} Father and Mother divorced in January 2005. In July 2005, Mother relocated to South Carolina with Daughter. Until the time of her move, Father had regularly exercised his visitation rights pursuant to the terms of the court ordered visitation schedule. After the move, the court modified the visitation schedule, ordering that Daughter visit Father in Ohio every summer and every other Christmas. On June 18, 2006, Daughter arrived at Father's house for a three-week visit as ordered by the modified visitation schedule. On that same day, Daughter

sustained injuries after striking a tree on Father's property while riding on an all terrain vehicle owned by Grandfather.

{¶3} On July 19, 2007, Grange, Father's homeowner's insurance company, filed a declaratory judgment action seeking a declaration that "it owes no duty to defend or indemnify [Father], [Stepmother], and [Grandfather], and a declaration that it owes no coverage or damages to [Mother] and [Daughter]." All named defendants filed an answer, and Father and Stepmother also filed a counterclaim seeking a declaration that Grange was obligated to defend and indemnify them with respect to Daughter's accident. Grange filed a motion for summary judgment in which it argued that Daughter's injuries were not covered under Father's homeowner's policy. Specifically, Grange maintained that, because Daughter was residing with Father at the time of the accident, she was an "insured person" under the terms of the policy and the policy expresses excludes coverage for a bodily injury sustained by an insured person while operating a recreational vehicle. Father and Stepmother filed a response and cross-motion for summary judgment, arguing that Daughter was not "residing" with Father for the purpose of insurance coverage because she had not visited with Father since she moved out of state in July 2005, nor did she return to Father's house following the accident to resume the balance of her three-week visit in 2006.

{¶4} Initially, the trial court denied both parties' motions, noting that there was a material dispute of fact as to whether there was a consistent exercise of any visitation since Daughter had moved to South Carolina. The parties then stipulated to the frequency and duration of Daughter's visitation since July 2005. Based on those stipulations, the trial court reconsidered the parties' previously-filed motions for summary judgment. The trial court concluded that Daughter was not residing with Father at the time of the accident and, therefore,

was not an "insured person" under the terms of Grange's policy. Accordingly, the trial court held that Grange's exclusionary language was inapplicable to Daughter and that Grange was required to provide insurance coverage for Daughter's injuries. Grange appeals from the trial court's decision, asserting one assignment of error for our review.

I

Assignment of Error

> "THE TRIAL COURT ERRED IN GRANTING THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND OVERRULLING (sic) GRANGE MUTUAL CASUALTY COMPANY'S MOTION FOR SUMMARY JUDGMENT."

{¶5} In its sole assignment of error, Grange argues that the trial court erred in granting summary judgment in favor of Father and Stepmother and that this Court should not look to the frequency and duration of Daughter's visitation, but rather, adopt the Second District's approach that accords minor children dual residency status for the purpose of insurance coverage in circumstances where both parents have custody and/or visitation rights.

{¶6} "This Court is obligated to raise sua sponte questions related to our jurisdiction." *No-Burn, Inc. v. Murati*, 9th Dist. No. 24577, 2009-Ohio-6951, at ¶7, citing *Whitaker-Merrell Co. v. Geupel Constr. Co., Inc.* (1972), 29 Ohio St.2d 184, 186. This Court has jurisdiction to hear appeals only from final judgments. Article IV, Section 3(B)(2), Ohio Constitution; R.C. 2501.02. In the absence of a final, appealable order, this Court must dismiss the appeal for lack of subject matter jurisdiction. *Lava Landscaping, Inc. v. Rayco Mfg., Inc.* (Jan. 26, 2000), 9th Dist. No. 2930-M, at *1. "For a judgment to be final and appealable, the requirements of R.C. 2505.02 and Civ.R. 54(B), if applicable, must be satisfied." *Konstand v. Barberton*, 9th Dist. No. 21651, 2003-Ohio-7187, at ¶4. Under R.C. 2505.02(B)(2), a decision "that affects a

substantial right made in a special proceeding or upon a summary application in an action after judgment" is final and appealable.

{¶7} The Supreme Court has held that "the duty to defend involves a substantial right to both the insured and the insurer." *General Acc. Ins. Co. v. Ins. Co. of N. America* (1989), 44 Ohio St.3d 17, 22. Additionally, it concluded that "[a] declaratory judgment action is a special proceeding pursuant to R.C. 2505.02[.]" Id. Accordingly, we conclude that the trial court's determination that Grange owes Father and Stepmother a duty to defend and must provide coverage for Daughter's injuries constitutes a final order under R.C. 2505.02. Next, we consider whether the trial court's judgment also satisfies the tenants of Civ.R. 54(B). Under that rule, a trial court "may enter final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay." Civ.R. 54(B). If a declaratory judgment action involves multiple claims or parties and the trial court's judgment deciding that action disposes of fewer than all of the claims or all of the parties, it is not final and appealable unless it includes the proscribed language from Civ.R. 54(B). *Roberts v. Reyes*, 9th Dist. No. 09CA009576, 2010-Ohio-1086, at ¶14, citing *Jarrett v. Dayton Osteopathic Hosp., Inc.* (1985), 20 Ohio St.3d 77, syllabus.

{¶8} Here, the trial court's judgment expressly states that Grange had a duty to defend Father and Stepmother, as well as an obligation to provide coverage for Daughter. The judgment does not, however, address whether Grange had a duty to indemnify Grandfather or to provide coverage to Mother, despite Grange's request in its complaint for such a declaration. Consequently, that portion of the declaratory judgment action remains pending before the trial court. This Court has previously stated that the trial court's judgment in a declaratory judgment action "must declare all of the parties' rights and obligations in order to constitute a final,

appealable order." *No-Burn, Inc.* at ¶11. Because the trial court has failed to declare whether Grange has any obligation to Grandfather or Mother as requested in its complaint and did not indicate that there is no just cause for delay pursuant to Civ.R. 54(B), we conclude that we are without jurisdiction to review the merits of Grange's appeal.

III

{¶9} This Court does not have jurisdiction to consider Grange's assignment of error because it has not appealed from a final, appealable order. Consequently, this appeal is dismissed.

Appeal dismissed.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHITMORE
FOR THE COURT

CARR, P. J.
MOORE, J.
CONCUR

APPEARANCES:

DANIEL E. CLEVENGER, Attorney at Law, for Appellant.

STEVE C. BAILEY, Attorney at Law, for Appellee.